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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1107th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 30 October 1991, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Iraq (CCPR/C/64/Add.6) (continued)

1. The CHAIRMAN recalled that at the 1106th meeting the Iraqi delegation had begun its answers to the questions raised by the members of the Committee under section V of the list of issues (Constitutional and legal framework within which the Covenant is implemented). He invited the Iraqi delegation to continue its replies.

2. Mr. MAHMOOD (Iraq) said that he wished first of all to reassure the members of the Committee who had expressed concern at possible malnutrition in Iraq. No one was suffering from malnutrition and there was no discrimination among children in the distribution of food; the only differences that might be observed were connected with material obstacles which rendered that distribution more difficult.

3. Contrary to what one member had suggested, the Iraqi authorities had never debarred international organizations from visiting the Basra region, where 50,000 Shiites lived. On the contrary, Iraq had always cooperated actively with such organizations and it continued to do so. Furthermore, his delegation could not understand how the situation of the Shiites in the south of the country could be regarded as special in character. Under the Iraqi Constitution and laws, the equality of all communities and denominations was guaranteed. Of course, the international community's attention had been drawn to the regions in the centre and south of the country, but the fact that Shiites lived there had no relation with the action taken by the State, which had been rendered necessary by the riots that had been raging there. Indeed, while 50,000 Shiites indeed lived in the Basra region, there were in fact several millions throughout the country; besides, many Christians also lived in that region. There was thus no Shiite problem in the Governorates.

4. Several members had requested particulars on the number of detainees released under the amnesty. During the 1991 riots, 15,150 persons had been arrested and 14,005 of them had benefited from the amnesty. There thus remained about 1,000 individuals who were guilty of ordinary offences and who were under investigation and would be brought before the ordinary courts. One member of the Committee had stated that 187 persons had been excluded from the benefit of the amnesty. Those persons were in fact individuals guilty of political offences whose arrest bore no relation to the riots. The individuals in question could not benefit from the amnesty that had been granted to the rioters.

5. With regard to the remedies available to Iraqis, he stressed that the courts of justice were open to anyone wishing to lodge a complaint or to claim the exercise of a right, without any restriction.

6. One member of the Committee had asked which of the rights enshrined in the Covenant were suspended in the event of the proclamation of a state of emergency. The state of emergency had never been proclaimed in Iraq, either

during the war with Iran or during the Gulf war. The Iraqi Government had considered that it should apply the ordinary legislation without any need to declare a state of emergency. A few legislative texts of a provisional character had been promulgated but they did not have the effect of suspending the exercise of the rights proclaimed in the Covenant.

7. The draft Constitution, the text of which had been published in Iraq in July 1990, had attracted the attention of several members of the Committee. Work on that draft had obviously been delayed by the Gulf events and the text was now at the revision stage. It was normal for the preparation of such an important text to be a lengthy process. The Constitution would be submitted to a referendum before being promulgated.

8. The question of the alleged detention of experts of the International Atomic Energy Agency (IAEA) called for clarifications. Those experts had in no way been subjected to administrative detention, contrary to what had been stated. Administrative detention was a measure reserved for situations of social disturbances and the case of the IAEA experts obviously did not fall into that category. In fact, in the course of their research into Iraq's nuclear programmes, the experts had taken possession of a large number of personal files belonging to Iraqi scientists and had tried to seize them. The Iraqi authorities had done no more than request the return of those files. Since the experts refused, the authorities had prevented them from leaving the place as long as they had not returned them. Furthermore, the Secretary-General of the United Nations had stated that the transmission of information to authorities other than the United Nations was unacceptable. It could thus be seen that there had never been any detention of experts. As soon as the files had been returned, the matter had been closed.

9. The functions of the Council of Ministers - on which clarifications had been requested - were listed in article 60 of the Constitution, which had been amended. The Council of Ministers prepared draft laws and transmitted them to the competent legislative authority; it promulgated administrative decrees and regulations pursuant to the law. Accordingly, it was the Council of Ministers that had prepared the law on political parties. That law guaranteed the equality of all parties, which would have full freedom to form themselves and to publish their literature. Nothing was yet known on the place to be attributed under the new Constitution to the party in power, since it had not yet been promulgated, but it would be inconceivable for the Constitution to make a distinction between the various political movements since the law guaranteed their equality. Since that law had abolished the single-party system, it followed that anyone who left the official party to join another party was not liable to any penalties. That reply should reassure the member of the Committee who had expressed concern on the subject.

10. It had been stated that the report attached less importance to civil and political rights than to economic, social and cultural rights. The Iraqi authorities were convinced that economic, social and cultural rights and civil and political rights were complementary and could not be dissociated from one another; indeed, that view was shared by another member of the Committee who had stressed the close relationship between the two types of rights. His delegation gave the assurance that despite all the sufferings which the population had had to endure in recent years, the Government would do everything it could to guarantee respect for all those rights.

11. Reverting to the Kurds of Iraq, he noted that one member of the Committee had asked whether the list of those Kurds who had returned from Turkey would be published. He stressed that there was nothing to prevent the publication of a list of the many persons who had returned to Iraq following conflicts between the Turkish authorities and the Kurdish Workers' Party. He added that the dialogue between the Iraqi Government and the Kurdish parties was continuing and was being intensified.

12. With regard to the position of the Covenant in internal law, his delegation recalled that the Covenant formed an integral part of Iraqi domestic law. The provisions of that instrument could be invoked by private individuals before the courts. He did not have any examples available on that point but he could assure the Committee that, while the decisions handed down by the courts were based in the first instance on domestic legislation, they also took due account of the provisions of the Covenant and of the other international instruments to which Iraq was a party.

13. There had been some questions concerning the respective powers of the Revolutionary Command Council and the National Assembly. Those powers were set out in articles 37, 38 and 50-53 of the Constitution. With regard, more particularly, to the adoption of laws, the role of the National Assembly was described in articles 52 and 53 of the Constitution. The National Assembly examined the draft laws submitted to it by the Revolutionary Command Council. In the event of a divergence of views between the Revolutionary Command Council and the National Assembly, the two bodies held a joint meeting at which a decision was taken by a two-thirds majority. The President of the Republic could also submit draft laws to the National Assembly and the procedure was then the same. As to whether the Revolutionary Command Council would be maintained in the future, the draft Constitution published in July 1990 was silent on the matter, but suggested already that a completely different constitutional structure would be put in place.

14. Following the abolition of the Revolutionary Courts, the cases which had been before them had been transferred to the ordinary courts. Persons who had been tried by the Revolutionary Courts now had the option to have their cases reviewed by the ordinary courts.

15. Lastly, particulars had been requested concerning the powers of the State Council. It should be stressed that that body was not similar to the State Council in France, for example. Basically, it had two tasks: first, it gave an expert legal opinion on draft laws and, secondly, it advised State bodies on specific points in the event of a divergence of views between different authorities. It was currently exercising an additional function, which consisted of advising on the validity of decisions of the Administrative Tribunal. The State Council consisted of lawyers with great theoretical and practical experience.

16. Mr. SADI requested additional information on the elections to the National Assembly which had taken place in 1988 and on the principles on which those elections had been based. Had they been in conformity with the provisions of the Covenant? The National Assembly was an essential pillar of the country's economic development and the Committee would welcome clarifications on that question.

17. Mr. FODOR said he wished to clarify a question which he had asked at the previous meeting regarding the withdrawal of civil officials from Iraqi Kurdistan, a question which had apparently been misunderstood by the Iraqi delegation. He himself felt that the presence of civil officials was important because it enabled some sort of control to be exercised over the region. He therefore inquired whether the Iraqi delegation could assure the Committee that the withdrawal of civil officials from Iraqi Kurdistan was not connected with a possible military operation directed against the Kurds. If Mr. Mahmood could confirm that the Iraqi authorities did not contemplate taking further military action against the Kurds, his own concerns would be allayed.

18. Mr. MAHMOOD (Iraq) said that he would reply to Mr. Sadi's questions later, in connection with section XIII of the list of issues.

19. As to the question put by Mr. Fodor, he stressed in the first place that the region situated in northern Iraq formed an integral part of Iraqi territory. It had therefore to be seen in the framework of the sovereignty and unity of Iraq. That was a historical, political and legal reality. It might be envisaged for the military authorities to withdraw from that region but it should not be forgotten that when disturbances occurred, causing deaths in the north of the country, the Iraqi authorities could not shirk their responsibility or cease to guarantee security throughout the national territory. Moreover, the Government had to see to it that the northern region of the country benefited from all the public services, whether economic, cultural or other, that were available in the other regions. There could therefore be no question of State officials - judges, doctors, university teaching staff, etc. - leaving that region.

20. The CHAIRMAN invited the Iraqi delegation to reply to the questions raised in sections VI, VII and VIII of the list of issues, in so far as it had not answered them under other sections. Sections VI, VII and VIII read:

"VI. Self-determination (article 1)

(a) With reference to paragraph 91 of the report, please comment further on the proposals aimed at enhancing the autonomy of Iraqi Kurdistan. Please clarify the actual state of relationship between the Government of Iraq and the Kurds in view of the number of different agreements that have been concluded between them.

(b) Please comment on the events of 2 August 1990, in the light of Iraq's obligations under article 1 (1) of the Covenant.

VII. State of emergency (article 4)

(a) With reference to the recent events, please clarify why Iraq did not declare a state of emergency and why the notification procedure laid down in article 4, paragraph 3, of the Covenant was not followed? (See paragraph 21 of the report.)

(b) What status was accorded to the rights enumerated in article 4, paragraph 2, of the Covenant, and what safeguards and effective remedies were available to individuals during the de facto state of war?

(c) Please clarify whether the Revolutionary Command Council decision 48 of 20 February 1991 ceased to have effect on 30 April 1991 as announced by the Minister of Justice. (See paragraph 21 of the report.)

VIII. Non-discrimination (arts. 2 (1) and 26)

Please comment on the current status of Shiites in the south of Iraq."

21. Mr. MAHMOOD (Iraq) said he wished to stress in the first place that, in the view of the Iraqi authorities, the questions appearing in section VI (a) were related to article 27 of the Covenant and not to article 1. In the report (CCPR/C/64/Add.6), the question of the dialogue between the Iraqi political leadership and a delegation of Kurdish parties was in fact mentioned in the section dealing with the application of article 27 of the Covenant.

22. The question of the enjoyment of their rights by Iraqi Kurds was not an issue of self-determination under international law but one of the rights of persons belonging to minorities, as embodied in article 27. The right of self-determination applied in the case of peoples which had been colonized. In Iraq, all the various minorities had coexisted peacefully since its establishment as a unified State.

23. The question raised in section VI (b) had already been dealt with in the framework of the various resolutions of the United Nations Security Council. The Iraqi authorities had fully accepted those resolutions, as well as the measures ensuing therefrom, and had expressly undertaken to apply them.

24. With regard to the question raised in section VII (c), he said that Revolutionary Command Council decision 48 of 20 February 1991 had ceased to have effect on 30 April 1991, the situation having returned to normal. In that connection, he specified that the time-limits for appeal, whose operation had been suspended by that decision in disregard of the rights of litigants, had subsequently been extended so that those concerned could effectively exercise their right to a remedy.

25. With regard to section VIII, everyone knew that Iraq was a country where no discrimination existed regarding any community whatsoever. The Constitution and the legal and social system of Iraq did not provide for any discrimination because Iraq consisted of a tissue of very diverse communities, which made for national unity. Accordingly, Shiites were not subjected to any discrimination in Iraq. Furthermore, they were spread over the whole of the territory of the country and no region was reserved for them.

26. Mr. FODOR thanked the Iraqi delegation for the information it had given concerning the distribution of food and the absence of discrimination in that respect. In view of the great scarcity of food and medicine, he would like to

know what specific measures had been taken to avoid such discrimination. What mechanisms existed to ensure fair distribution? Was that distribution carried out under central government control or by the local authorities? Were there any guidelines set for the distribution, and had any quotas been estalished?

27. Mrs. HIGGINS, referring to section VI (a), said she wished to explain that, in the view of the Committee, the right of self-determination applied not only to colonial situations but to other situations as well. It was the ongoing right of the people of a given territory to be able to determine their political and economic destiny. In certain countries in which the Constitution gave a privileged status to a particular party, a problem pertaining to the right of self-determination could often be noted. However, solutions existed for the problem and the recognition of the right to autonomy was one of them. That was why the question of the right of self-determination of Iraqi Kurds appeared in the section of the list dealing with issues to be taken up under article 1 of the Covenant. Since the Iraqi delegation did not wish to reply to those questions in the framework of the application of article 1 and since it had already given an answer to the questions coming under article 27, she would like that delegation to explain briefly the position of the Iraqi authorities concerning the autonomy of Iraqi Kurdistan.

28. Ms. CHANET said the position of the Iraqi delegation according to which the problems of the Iraqi Kurdish people were not related to the application of article 1 of the Covenant was unjustified in the light of the Iraqi Constitution, and more particularly its article 5 (b), which stated that the Iraqi people consisted of two main ethnic groups - the Arabs and the Kurds. The same provision specified that the Constitution recognized the national rights of the Kurdish people and the legitimate rights of all minorities within Iraqi unity. Accordingly, she understood "minorities" to mean communities other than the Arab and Kurdish ethnic groups. That problem was perhaps due to an inaccurate translation of the Constitution into French and she would welcome a clarification on that point from the Iraqi delegation.

29. Mr. MAHMOOD (Iraq) replying to Mr. Fodor's question, said that following the adoption of Security Council resolution 661 (1990), the Iraqi authorities had put in place a general scheme which guaranteed a minimum food supply to all citizens regardless of the region where they lived. Under that scheme, every Iraqi citizen received each month 8 kg of flour, 1 kg of rice, 1.5 kg of sugar, 50 g of tea, 1 kg of cereals and the equivalent of 50 g of vegetable oil. The total value of that basket of goods was approximately $6. The prices of all those products were subsidized and the same foodstuffs cost 20 times as much in the free market. He added that that distribution obviously did not cover all the population's needs. Distribution of the products concerned took place against the presentation of ration coupons issued by the Ministry of Trade and distributed with the cooperation of the People's Councils of the various regions; he specified that those councils consisted of ordinary citizens, not of officials. The distribution itself was carried out by the local shops. The Iraqi delegation could make available to the Committee a document giving fuller details on that question. He added that Prince Sadruddin Aga Khan and the five international experts who had recently visited Baghdad had found the distribution of food to be fair. They had been able to see for themselves that the operations in question were non-discriminatory.

30. In reply to the question put by Mrs. Higgins, he remarked that the right of self-determination should be distinguished from the rights of minorities. The two notions were quite separate in international law. The rights of the Iraqi Kurds came under the heading of rights of persons belonging to minorities. Iraq had a law on autonomy which was certainly not exhaustive and which could be improved but which none the less existed. That law was in the process of revision and its provisions would be developed in order to strengthen the enjoyment of their rights by the Kurds in conformity with the Constitution and with Iraqi law.

31. Nevertheless, it had to be admitted that the experiment of the autonomy of Kurdistan had not come to much and that the objective pursued by the law had not been attained because many obstacles - some of them attributable to external factors connected with the relations with neighbouring States - had served to slow down the process. In general it could be said that the stability of that region was important for the stability of Iraq as a whole.

32. With regard to the remarks by Ms. Chanet, he saw no contradiction between his own statement and the provisions of the Iraqi Constitution. As he saw it, article 5 of the Constitution re-emphasized the difference between the right to self-determination and the rights of minorities by stressing the unity of the Iraqi people, which consisted of two main ethnic groups together with a number of other ethnic groups.

33. The CHAIRMAN invited the Iraqi delegation to reply to the questions in section IX of the list of issues, which read:

"IX. Right to a fair trial (article 14)

(a) Please clarify whether legal deadlines including the deadlines for appeals against judgements and decisions established by the Code of Civil Procedure, the Penal Code and any other law were re-established as at 30 April 1991. What had been the consequences of such suspension on the rights of the plaintiffs?

(b) In the light of the dissolution of the Revolutionary Court on 15 May 1991 and of the establishment of the Administrative Causes Court, please provide additional information on the organization of the judiciary. How is the independence and impartiality of the judiciary ensured? What is the procedure for the removal of judges?

(c) Please clarify the scope of article 30 of the Public Prosecution Act as amended by Act No. 5 of 7 January 1987, in particular with regard to the implementation of the right to have one's conviction and sentence being reviewed by a higher tribunal as provided for by article 14, paragraph 5, of the Covenant. Can an appeal be made only when national interest, State property or public order is concerned? Please clarify the meaning of the statement in the report that an appeal can be made irrespective of the expiry of any legal deadlines. (See paragraphs 50 and 51 of the report.)"

34. Mr. MAHMOOD (Iraq), replying to the questions in subparagraph (a), explained that Revolutionary Command Council decision 48 adopted in February 1991 had suspended all legal deadlines, including the deadlines for appeals against judgements and decisions established by the Code of Civil Procedure, the Penal Code and any other law as of 17 January 1991, the starting date of the war against Iraq. That decision had in no way affected the rights of litigants since it had ceased to apply on 30 April 1991, as had been announced by the Ministry of Justice, and since the time-limits for appeal had been extended so that litigants had been able to avail themselves of the remedies which had not been available to them before that date because of the situation prevailing in the country. The suspension of the provisions relating to time-limits for appeal could therefore not be considered as detrimental to the interests of litigants.

35. In reply to the questions raised in subparagraph (b) of section IX, he explained that the dissolution of the Revolutionary Court and the revision of the emergency measures had made it possible to give back to the ordinary courts their jurisdiction in all areas and to strengthen the role of those courts in the matter of the protection of human rights. On the same lines, the Administrative Causes Court had been established to examine complaints by persons who considered themselves to have been injured by administrative decisions taken against them by the Iraqi authorities. The establishment of that court had been an unprecedented decision in Iraqi history with regard to the implementation of human rights.

36. As to the organization of the judiciary, he pointed out that, in conformity with the Constitution now in force, justice was independent and was subject only to the authority of the law; furthermore, the right to institute judicial proceedings was guaranteed to all citizens. The law of 1987 on the organization of the judiciary guaranteed the independence of justice and the neutrality of judges and specified the conditions for their appointment, promotion, transfer and retirement. The only authority having power to remove a judge was the Commission on Cases concerning Judges and Magistrates set up pursuant to the Act on the organization of the judiciary. That Commission, consisting only of jurists belonging to the Bar, was empowered to recommend the dismissal of a judge if it found that he had dishonoured his profession or was unfit to continue to perform his functions because of considerations relating to integrity or competence. The judge could then be removed by presidential decree after the examination of his case, which took place in camera.

37. In reply to the questions raised in subparagraph (c), he explained that the appeal procedure, which had been instituted in the interests of observance of the law, was exceptional in character and applied only to civil cases and not to criminal cases. Its purpose was to prevent any breach of the law and to remedy any abuses which might be committed.

38. Mr. ANDO, referring to paragraph 48 (c) of the report, asked what procedure was followed to evaluate the study required to be submitted by judges, who were the examiners and what influence the results of that evaluation had on the promotion of judges. He also wished to know what competence and training were required from the five members of the Court of Cassation and what were the grounds on which judgements of that Court were rendered, as mentioned in paragraph 51 of the report.

39. Mr. SADI asked what exactly was the procedure for the appointment of judges: were there, for example, several series of recommendations and was the body entrusted with the appointment of judges totally independent of the legislature and the executive?

40. Mr. WENNERGREN, referring to paragraph 52 of the report, said he failed to see how "a member of the State Council", who was therefore not a judge, could exercise the functions of resident of a court, to wit the Administrative Causes Court. Of course, all members of the State Council could possess great competence in legal matters but they did not necessarily have the independence required of a judge. Moreover, he wished to know what was the procedure followed by the Administrative Causes Court "to put ... on its register" its decision relating to an appeal and how many cases had been submitted to the Court since its establishment in 1989.

41. Mrs. HIGGINS asked once again whether, after the dissolution of the Revolutionary Court, special courts could still exist or whether they too had been abolished.

42. Mr. LALLAH stressed the fundamental role played by the judiciary and asked whether provision was being made in the draft Constitution to define the functions of the judiciary in the Constitution itself instead of the matter being governed, as at present, by ordinary legislation.

43. Mr. MAHMOOD (Iraq) said that, in the first place, judges had to be appointed from among lawyers who had practised their profession for over 10 years and whose competence, impartiality and positive role before the courts were acknowledged by the appointment committees. In the second place, a person could be appointed a judge if he was a graduate of the Legal Institute and had held functions in the courts for over three years. Candidates for admission to the Legal Institute's examination were required to be practising lawyers, jurists or officials of one of the various services of the Ministry of Justice with a comprehensive knowledge of the law. Successful candidates were called to an interview with the Council of the Institute, which decided on their admission. Theoretical and practical studies then continued for two years, at the end of which those candidates who were successful in the final examination could be appointed judges by presidential decree.

44. There were four categories of judges in Iraq. To be promoted to a higher category, a judge had to submit a study in his own field of competence that was of use to justice and to the judicial profession. If the study submitted was not considered satisfactory, the judge concerned was not promoted and his salary remained unchanged. When promotion was refused for that same reason twice in succession, the professional competence of the judge was reviewed in order to decide whether, if appropriate, his functions should be terminated.

45. Turning to the powers of Director of Public Prosecutions to appeal against a decision taken in breach of the law and to the detriment of the national interest, State property or public order, he explained that the powers in question had been conferred upon the Public Prosecution under an amendment made in 1987 to the 1979 Public Prosecution Act. As for the Court

of Cassation, it should be explained that it did not consist of only five judges but of 30 judges who, in order to be appointed, had to belong to the first category and have a minimum of 22 years' service in the judicial profession.

46. Mr. Sadi had rightly stressed the importance of the impartiality and independence of the Public Prosecutor with respect to the executive and the legislature. In reply to that member's question on the conditions for the appointment of judges, he repeated that the Government did not make any recommendations in that respect and that new judges were chosen from among lawyers or from among candidates selected by the Council of the Legal Institute, a totally independent body headed by a judge or by a prosecutor. The Court of Cassation was also presided over by a judge.

47. The Administrative Causes Court, to which Mr. Wennergren had referred, was presided over in conformity with the relevant legislative provisions, by a judge of the first category or a member of the State Council. As Mr. Wennergren had pointed out, however, when the law provided for the appointment of a member of the Council of State as president, it made an exception to the principle which required all members of courts to be judges and that exception constituted a problem which deserved to be thoroughly examined. As for the modalities for appeal, the legislator's purpose had been to avoid all appeals in administrative causes going directly before the Administrative Causes Court. That was why it had made provision for a first-tier jurisdiction before the competent administrative organ, which ruled on the recourse. On occasion the Administrative Causes Court had ruled in favour of the appellant and against a State body. In other cases, the Court had rejected the appeal for lack of evidence. Paragraph 56 of the report mentioned, as examples, a certain number of decisions handed down by that court.

48. Mrs. Higgins had asked whether any special courts still existed after the dissolution of the Revolutionary Court. He wished to specify that no special courts existed in Iraq and that the prerogatives of the Revolutionary Court had been transferred to the ordinary courts in accordance with their respective areas of jurisdiction and geographical distribution.

49. Reference had been made by Mr. Lallah to the provisions of the Constitution relating to the organization of the judiciary, i.e. articles 63 and 64 of the new Constitution - and not articles 60 and 61 which that member had mentioned. The Constitution set forth the major principles to be observed with regard to the independence of the judiciary, the jurisdiction of the courts and the rights of litigants, but all questions relating to the appointment, removal, remuneration and conditions of work of judges were governed by the relevant laws.

50. The CHAIRMAN said that the Committee had completed its consideration of section IX of the list of issues relating to the third periodic report of Iraq. He invited the members of the Committee to proceed to examine the next section, which read:

"X. Freedom of movement and expulsion of aliens (articles 12 and 13)

(a) What legal provisions govern the freedom of movement of aliens in the country? What was the legal basis, consistent with the Covenant, for the restriction of freedom of movement of a certain number of aliens subsequent to 2 August 1990?

(b) What legal provisions govern the expulsion of aliens and does an appeal against an expulsion order have suspensive effect?"

51. Mr. MAHMOOD (Iraq) said that aliens who had been legally authorized to enter Iraq could move freely within the confines of Iraqi territory, but certain zones, such as military bases, were off limits to them. The question of the expulsion of aliens had already been dealt with in Iraq's initial report (CCPR/C/1/Add.45), where the legal provisions on the subject had been set forth. In that connection, he recalled that article 11 of the Act governing the residence of aliens empowered the Director-General of the responsible services to order the expulsion of an alien, who could then appeal against that decision to the Minister of the Interior within 15 days of its notification. An expulsion order was enforceable only after being promulgated by a decree of the Minister of the Interior.

52. Ms. CHANET said that while paragraph 46 of the report referred to the restrictions imposed on the freedom of Iraqi citizens to travel abroad for purposes of tourism, it said nothing about their freedom of movement inside the country. She would like to know whether certain zones were forbidden not only to aliens, as the Iraqi delegation had indicated, but also to Iraqi citizens.

53. Apart from that, had there been any mass population movements in Iraq during the period covered by the report? In that respect, would it not have been better for Iraq to make the declaration provided for in article 4 of the Covenant, a course of action which would have had the advantage of enabling the Committee to become aware of the situation and to verify whether the required conditions existed for authorizing a derogation from certain articles of the Covenant, namely the observance of the principles of proportionality and non-discrimination?

54. Mr. ANDO expressed regret at the Iraqi delegation's failure to give a detailed answer to the second question raised in subparagraph (a) of the section under consideration, which concerned the legal basis for the restriction of freedom of movement of a certain number of aliens subsequent to 2 August 1990. It should be recalled that on that occasion certain aliens had been prevented from returning to their countries or had been transferred to certain sites in Iraq in order to serve, to use the expression employed by the foreign media, as "human shields". According to article 12 of the Covenant everyone lawfully within the territory of a State had the right to freedom of movement therein and freedom to choose his residence, and everyone was free to leave any country, including his own. That article also specified that in certain circumstances restrictions to that right could be justified. On what

basis had the Iraqi authorities relied to formulate the measures applied in August 1990? Even though all the persons concerned had fortunately been ultimately released, their situation had given rise to much concern for some time.

55. Mr. MAHMOOD (Iraq) pointed out in reply to Ms. Chanet that in Iraq certain zones were forbidden to both Iraqi citizens and aliens, in particular military plants, strategic laboratories, etc. There was nothing exceptional in those restrictions. For example, anyone wishing to have access to the premises of the United Nations Office at Geneva had to submit to certain checks.

56. Mr. Ando had suggested that it might have been preferable for the Iraqi authorities to justify the restrictions placed on the freedom of movement of aliens in Iraq after 2 August 1990 by making the declaration provided for in article 4 of the Covenant. Since, however, it was stated in paragraph 3 of article 12 of the Covenant that the rights mentioned therein could be subject to restrictions which were provided by law, were necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and were consistent with the other rights recognized in the Covenant, article 12 could be construed as stating a general rule and specifying certain exceptions thereto. The restrictions imposed on the freedom of movement of a certain number of aliens in August 1990 had constituted extraordinary measures applied in exceptional circumstances and not in an arbitrary fashion. It should also be pointed out that the aliens concerned had not been placed in enforced residence in particularly uncomfortable places! The Iraqi authorities had thus followed the principle whereby an exceptional situation called for exceptional measures. In any case, no national of a third country residing in Iraq had suffered from those measures. All the persons concerned had been able to leave Iraq eventually, so that when the war had broken out there hand been no aliens still retained in Iraq.

57. The CHAIRMAN said that the Committee had completed its consideration of section X of the list of questions relating to Iraq's third periodic report. He invited the members of the Committee to proceed to consider the next section, which read:

"XI. Freedom of religion and expression: prohibition of propaganda for war and of incitement to national, racial or religious hatred (articles 18, 19 and 20)

(a) Please provide information concerning registration or other procedures relating to the recognition of religious denominations. Have any difficulties been encountered in the foregoing regard?

(b) With reference to paragraphs 7 and 63 of the report, please provide additional information on recently drafted legislation relating to the press. What controls are exercised, under the law, on the freedom of the press and the mass media, including possible censorship?"

58. Mr. MAHMOOD (Iraq), referring first to subparagraph (a), said that, as indicated in the second periodic report of his country (CCPR/C/37/Add.3, para. 204), there were in Iraq 17 officially recognized religious communities which had been present in the country for an extremely long time. Since no new religious sects or communities had been established, no problem of registration had arisen. It was also important to note that the Iraqi State extended its support to all 17 of the communities concerned, without any discrimination.

59. The draft legislation relating to the press referred to in subparagraph (b), which had now been completed in principle, would be submitted shortly to the National Assembly with a view to its promulgation. The Iraqi Press Asscciation had participated in its formulation. Furthermore, the law on political parties authorized every one of those parties to publish a newspaper or magazine. As for the freedom of expression, although there was an official control service for the media, there was no longer any censorship and the restrictions which had been imposed on the activities of foreign correspondents because of the exceptional situation created by the war had been lifted.

60. Mr. HERNDL observed that the report under review dealt very briefly with the question of freedom of opinion and expression set forth in article 19 of the Covenant. Article 26 of the new Constitution, which enshrined the freedom of opinion, expression and association, appeared consistent with article 19 of the Covenant, but the latter also mentioned the freedom to seek information. How was that right realized in Iraq? And what explanation was there for the fact that a journalist who was seeking information had been brought before the Iraqi courts, sentenced to death and executed? How could such a sentence be justified in the light of article 19, for even though that article permitted certain restrictions, they had to be expressly provided for by law?

61. Since, as just indicated by the Iraqi delegation, political parties were henceforth authorized to publish newspapers or magazines, it could be inferred that the media were to be privatized. He would like to know whether the Iraqi television and the audio-visual media to which reference had been made in the previous periodic report (CCPR/C/37/Add.3, para. 211) were privatized or State-controlled. Reference had also been made in the same report (ibid. para. 209) to Act No. 94 of 1981 of the Ministry of Culture and Information which had instituted the principle of the freedom of information but had also specified that the Ministry in question had, among other objectives, that of the "revival of the Islamic heritage" and the "dissemination of information on Arab civilization". Did the Iraqi authorities not regard those cultural limits as somewhat narrow? Could the freedom of expression of the media to disseminate information not forming part of the Islamic heritage conceivably be restricted?

The meeting rose at 6 p.m.